



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1996

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR96-1138

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100411.

The El Paso Police Department (the "department") received two requests for information seeking the investigatory reports concerning two separate incidents. You contend that the reports are excepted from required public disclosure by section 552.101 of the Government Code. You explain that the reported incidents involve three children under 10 years of age and two children who are 10 years old. You have submitted to this office the requested documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue first that the reports are deemed confidential under section 58.007 of the Family Code. Section 58.007 provides

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child shall:

(1) be kept separate from adult files and records; and

(2) be maintained on a local basis only and not sent to a central state or federal depository.

(d) The law enforcement files and records of a person who is transferred from the Texas Youth Commission to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice may be transferred to a central state or federal depository for adult records on or after the date of transfer.

(e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

This office recently addressed whether juvenile records maintained by a law enforcement agency are confidential under section 58.007. Open Records Decision No. 644 (1996). We noted that while section 58.007 restricts disclosure for records and files of a juvenile court, a clerk of court, a juvenile probation department, and a prosecuting attorney relating to a child, it does not contain a confidentiality provision that restricts access to juvenile law enforcement records and files in the hands of a law enforcement agency. Although section 58.007(e) provides that law enforcement records concerning juveniles "may" be inspected by a juvenile or criminal justice agency, the provision contains no restriction that limits inspection only to these two types of agencies. We concluded that records of juvenile offenders concerning conduct occurring on or after January 1, 1996, that are held by law enforcement agencies are not made confidential under section 58.007 of the Family Code. *Id.* at 4. Thus, you may not withhold any of the requested documents because of section 58.007 of the Family Code.¹

¹ We note, however, that other statutes and exceptions to disclosure may protect certain information concerning juvenile offenders. Sections 58.001 and 58.003 of the Family Code provide for

Additionally, section 51.02 provides that in title 3 of the Family Code "child" has the following meaning:

(1) "Child" means a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Title 3 of the Family Code governs delinquent children and children in need of supervision. However, a child cannot be declared to be a delinquent child subject to a proceeding under title 3 unless he is within the age limit set forth in the statute. *See Steed v. State*, 183 S.W.2d 458, 460 (Tex. 1944); *Ballard v. State*, 192 S.W.2d 329, 330 (Tex. Civ. App.-Amarillo 1946). The reports in question here which concern three juveniles under the age of ten and two who are ten. The three juveniles under the age of ten do not fall within the definition of "child" for the purposes of section 58.007. Accordingly, the records concerning the juveniles who under the age of ten may not be withheld pursuant to the Family Code. As outlined above, the records concerning the ten-year-olds may not be withheld pursuant to the Family Code either.

You assert alternatively that the records are protected by a right to privacy. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to

the destruction or sealing of juvenile records under certain conditions. Section 58.106(a) protects certain information maintained in the Department of Public Safety's juvenile justice information system.

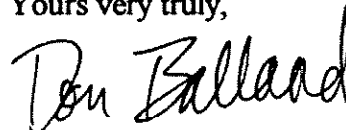
marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

We have reviewed the reports submitted for our consideration. We believe that there is a legitimate public interest in the documents and that they do not contain information that is highly intimate and embarrassing. *See* Open Records Decision No. 628 (1994). We do not believe that the requested information is protected by common-law privacy. Moreover, the submitted information does not contain information that falls within any of the "zones of privacy" recognized under the constitutional privacy doctrine, nor do we believe that release of the submitted information would cause "invasions of privacy involving the most intimate aspects of human affairs." Consequently, you may not withhold the requested information under the common-law or constitutional doctrines of privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 100411

Enclosures: Submitted documents
Open Records Decision No. 644 (1996)

cc: Mr. Yousar Mahmood
8500 Dyer Street # 30
El Paso, Texas 79904
(w/o enclosures)

Mr. Julio R. Martinez
306 Golodrina Circle
El Paso, Texas 79907
(w/o enclosures)